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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,003

07/30/2003

Scott F. Watson

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EXAMINER

MONTOYA, OSCHTA I

ART UNIT

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2421

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,003	<b>Applicant(s)</b> WATSON ET AL.	
	<b>Examiner</b> Oshta Montoya	<b>Art Unit</b> 2421	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 48-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/16/2010 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 48-73 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 48-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification and originally filed claims fails to support "receiving the delivering of **the first media asset** at the user device, **periodically**, based on one or more download timing constraints..." as now recited in claims 48-73.

The specification at paragraph 35 discloses "... the client process manages delivery of **assets** to the user device, **periodically**, when specific constraints are met..." and at paragraph 50 discloses "... specifically, **assets** are delivered to a user device, **periodically**, when specific constraints are met..."

The examiner respectfully believes that paragraphs 35 and 50, at most, teach that assets (different assets not one asset or the first media asset) are delivered periodically. These paragraphs and originally filed claims are silent about "receiving the delivering of **the first media asset** at the user device, **periodically**, based on one or more download timing constraints..."

Therefore, as claimed, claims 48-73 do not correspond to or lack support from the specification.

5. Claims 50, 52-56, 58, 60-64, 67, and 69-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification and originally filed claims fails to support "...download timing constraints includes a bandwidth availability of the network." as now recited in claims

50, 58, and 67; "...download timing constraints includes an assured quality of service." as now recited in claims 52, 60, and 69; "...download timing constraints includes the user device being idle." as now recited in claims 53, 61, and 70; "...download timing constraints includes a level of activity of the network." as now recited in claims 54, 62, and 71; "...download timing constraints includes a level of memory usage of the user device." as now recited in claims 55, 63, and 72; "...download timing constraints includes a level of CPU usage of the user device." as now recited in claims 56, 64, and 73.

The specification at paragraph 35 and 50 discloses that the constraints could be "...network bandwidth availability, user device memory, assured quality of service, etc.", at paragraph 57 discloses that the constraints could be "...network bandwidth availability, user device memory, time of the day, and assured quality of service, etc.", and at paragraph 59 discloses that the constraints could be "...bandwidth of the network, time of the day, quality of service, etc."

The examiner respectfully believes that paragraphs 35, 50, 57, and 59 indicate that the assets are delivered when there is optimal network bandwidth availability, not that the timing of downloads are constrained by the bandwidth **or** that the assets are delivered when there is assured quality of service, not that the timing of downloads are constrained by the quality of service **or** that the assets are delivered when the user device is idle, not that the timing of downloads are constrained by the user device being idle **or** that the assets are delivered when there is an optimal level of activity on the network, not that the timing of downloads are constrained by a level of activity of the

network **or** that the assets are delivered when a level of memory usage is reached by the user device, not that the timing of downloads are constrained by a level of memory usage of the user device **or** that the assets are delivered when a level of CPU usage is reached by the user device, and not that the timing of downloads are constrained by a level of CPU usage of the device.

Therefore, as claimed, claims 50, 52-56, 58, 60-64, 67, and 69-73 do not correspond to or lack support from the specification.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 48-51, 54, 56-59, 62, 64-68, 71, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Needham et al., US 2003/0177495 in view of Arsenault et al., US 6,701,528.

Regarding claim 48, Needham discloses a method of obtaining a first media asset by a user device over a network, the method comprising:  
sending a request to a remote server for a delivery of the first media asset to the user device over the network (24 figure 2), wherein the request is based on a selection of the first media asset from the asset list (EPG data) based on the information about the plurality of media assets (paragraph 23);

receiving the delivery of the first media asset at the user device based on one or more download timing constraints, managed by the user device, being met (paragraph 20, 24, and 27); and  
providing an uninterrupted and continuous stream of the first media asset for viewing by a user without requiring a real-time buffering (paragraph 20).

Although, Needham discloses that the software to implement the EPG is store at the set top box (paragraph 27); Needham is silent as to receiving an asset list, including information about a plurality of media assets, over the network; storing the asset list, including the information about the plurality of media assets, in a memory, and that the asset is periodically received.

In an analogous art, Arsenault discloses receiving an asset list, including information about a plurality of media assets, over the network; storing the asset list, including the information about the plurality of media assets, in a memory (col. 7, lines 29-31) and that the asset is periodically received (figure6, col. 11, lines 8-22, col. 16, lines 45-49).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham's method to include receiving and storing the asset list and periodically receiving the asset, as taught by Arsenault. The motivation would have been to have the EPG data and content ready to be process when the user requests the data.

Regarding claim 49, Needham and Arsenault disclose the method of claim 48, wherein the selection is made by the user (see Needham 24 figure 2, paragraph 23).

Claim 66 is rejected on the same grounds as claim 49.

Regarding claim 50, Needham and Arsenault disclose the method of claim 48, wherein the one or more download timing constraints includes a bandwidth availability of the network (see Needham paragraph 20).

Claims 58 and 67 are rejected on the same grounds as claim 50.

Regarding claim 51, Needham and Arsenault disclose the method of claim 48, wherein the one or more download timing constraints includes a time of day (see Needham paragraph 20).

Claims 59 and 68 are rejected on the same grounds as claim 51.

Regarding claim 54, Needham and Arsenault disclose the method of claim 48, wherein the one or more download timing constraints includes a level of activity of the network (see Needham paragraph 20).

Claims 62 and 71 are rejected on the same grounds as claim 54.



Regarding claim 56, Needham and Arsenault disclose the method of claim 48, wherein the one or more download timing constraints includes a level of CPU usage of the user device (see Needham paragraph 20).

Claims 64 and 73 are rejected on the same grounds as claim 56.

Regarding claim 57, Needham discloses a method of delivering a first media asset selected from an asset list supplied to a user device over a network, the asset list including information about a plurality of media assets, the method comprising: receiving a request, based on the information, for a delivery of the first media asset to the user device (24 figure 2, paragraph 23); and delivering the first media asset to the user device based on one or more download timing constraints, managed by the user device, being met (paragraph 20, 24, and 27); whereby the first media asset can be made viewable by the a user device to a user by providing an uninterrupted and continuous stream of the first media asset without requiring a real-time buffering (paragraph 20).

Needham fails to teach that the asset is periodically received.

In an analogous art, Arsenault discloses that the asset is periodically received (figure6, col. 11, lines 8-22, col. 16, lines 45-49).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham's method to include periodically receiving the asset, as taught by Arsenault. The motivation would have been to have the EPG data and content ready to be process when the user requests the data.

Regarding claim 65, Needham discloses a user device for obtaining a first media asset over a network and displaying the first media asset to a user, the user device comprising:

a memory (68 figure 4); and

a CPU (74 figure 4) configured to

send ,a request to a remote server for a delivery of the first media asset to the user device over the network (24 figure 2), wherein the request is based on a selection of the first media asset from the asset list (EPG data) based on the information about the plurality of media assets stored in the memory (paragraph 23) ;

receive the delivery of the first media asset at the user device based on one or more download timing constraints, managed by the user device, being met (paragraph 20, 24, and 27); and

provide an uninterrupted and continuous stream of the first media asset for viewing by a user without requiring a real-time buffering (paragraph 20).

Although, Needham discloses that the software to implement the EPG is store at the set top box (paragraph 27); Needham is silent as to receiving an asset list, including information about a plurality of media assets, over the network; storing the asset list,

including the information about the plurality of media assets, in a memory, and that the asset is periodically received.

In an analogous art, Arsenault discloses receiving an asset list, including information about a plurality of media assets, over the network; storing the asset list, including the information about the plurality of media assets, in a memory (col. 7, lines 29-31) and that the asset is periodically received (figure6, col. 11, lines 8-22, col. 16, lines 45-49).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham's method to include receiving and storing the asset list and periodically receiving the asset, as taught by Arsenault. The motivation would have been to have the EPG data and content ready to be process when the user requests the data.

8. Claims 52, 60, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Needham in view of Arsenault in view of Son et al., US 7,159,235.

Regarding claim 52, Needham and Arsenault disclose the method of claim 48.

Needham and Arsenault fail to teach the one or more download timing constraints includes an assured quality of service.

In an analogous art, Son discloses the one or more download timing constraints includes an assured quality of service (col. 10, line 66 to col. 11, line 10).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham and Arsenault's method to include assured quality of service as taught by

Son. The motivation would have been to give the user the best possible service.

Claims 60 and 69 are rejected on the same grounds as claim 52.

9. Claims 53, 61, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Needham in view of Arsenault in view of Nawaz et al., US 5,959,621.

Regarding claim 53, Needham and Arsenault disclose the method of claim 48.

Needham and Arsenault fail to teach the one or more download timing constraints includes the user device being idle.

In an analogous art, Nawaz discloses the one or more download timing constraints includes the user device being idle (col. 9, lines 7-9).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham and Arsenault's method to include downloading during idle time, as taught by Nawaz. The motivation would have been to be able to display the data sequentially and substantially continuous and in a seamless manner.

Claims 61 and 70 are rejected on the same grounds as claim 53.

10. Claims 55, 63, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Needham in view of Arsenault in view of Ueda, US 5,815,194.

Regarding claim 55, Needham and Arsenault disclose the method of claim 48.

Needham and Arsenault fail to teach the one or more download timing constraints includes a level of memory usage of the user device.

In an analogous art, Ueda discloses the one or more download timing constraints includes a level of memory usage of the user device (col. 3, lines 26-34).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Needham and Arsenault's method to include downloading base on memory, as taught by Ueda. The motivation would have been to be able to give the user the greater number of desired programs.

Claims 63 and 72 are rejected on the same grounds as claim 55.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oschta Montoya whose telephone number is (571)270-1192. The examiner can normally be reached on Monday/Friday 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2421

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

OM